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MAYBACK & HOFFMAN, P.A. 5846 S. FLAMINGO ROAD #232 FORT LAUDERDALE, FL 33330			EXAMINER KONERU, SUJAY	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PEDRO CABRERA SCHEIDER

Appeal 2014-007427
Application 12/561,365
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-20 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellant's claimed invention is directed to a system and method for evaluating and comparing businesses using a benchmarking tool (Spec., para. 2). Claim 1, reproduced below with the numbering in brackets added, is representative of the subject matter on appeal.

1. A system for evaluating and comparing businesses, comprising:

[1] a server having at least one processor and at least one computer-readable storage medium, the at least one computer-readable storage medium having computer program instructions configured to be executed by the at least one processor of the server;

[2] an Internet-accessible portal having a graphic user-interface wherein the portal is communicatively coupled to the server;

[3] one or more data figures that reflect operations of a user's business wherein the one or more data figures are entered into the portal by the user and are stored in the at least one computer-readable storage medium;

[4] one or more metrics wherein the one or more metrics are calculated by the at least one processor based upon the one or more data figures and are indicative of the user's business operations;

[5] a group of one or more businesses similarly situated to the user's business as defined by the user wherein the metrics of the one or more similarly situated businesses are known and have been stored in the at least one computer-readable storage medium;

[6] wherein a metric ranking number is assigned by the at least one processor to the user's business and to each of the one or more businesses of the group based upon their respective metrics;

[7] wherein one or more recommended benchmark values are determined for the one or more data figures of the user's business operations based upon the metrics of the one or more businesses of the group; and

[8] wherein the metric ranking numbers of the user's business and each of the one or more businesses of the group are displayed by the at least one processor in a format viewable at the Internet-

accessible portal wherein their respective metrics can be compared against one another.

THE REJECTIONS

The following rejections are before us for review:

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eckert (US 2005/0154769 A1, published Jul. 14, 2005) and Farrell (2008/0262882 A1, Oct. 23, 2008).

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence¹.

ANALYSIS

The Appellants argue that the rejection of claim 1 is improper because the cited prior art fails to disclose claim limitation [7] identified in the claim above (Appeal Br. 22-27, Reply Br. 2-6).

In contrast, the Examiner has determined that the cited claim limitation is found in Farrell at Figures 3, 4, and paras. 40 and 52 (Ans. 3, 4).

We agree with the Examiner. Here, the argued claim limitation [7] requires

wherein one or more recommended benchmark values are determined for the one or more data figures of the user's business operations based upon the metrics of the one or more businesses of the group.

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

(Claim 1). Thus, the claim requires that the recommended benchmark values are determined using one or more data figures of the user's business operations and based on the metrics of the business. Farrell at paragraph 40 makes reference to and describes Figure 1. Farrell at Fig. 1 shows presenting benchmarks (step 108) that are based on collected data from business oriented metrics (122) and metrics from that business such as volume, overhead, revenue, and profit (102) meeting the argued claim limitation.

The Appellant has also made reference to TABLES 1 and 2 of the Specification but these are specific embodiments which contain elements not recited in the claim limitation at issue under a broadest reasonable interpretation. The Appellant make reference to Farrell at Figures 3 and 4 as not disclosing the cited claim limitation (Appeal Br. 23-25, Reply Br. 4, 5) but as we have noted, the cited claim limitation is disclosed by Farrell at paragraph 40 and its reference to Figure 1.

For these reasons the rejection of claim 1 is sustained. The Appellants have presented the same arguments for the remaining claims and the rejection of these claims is accordingly sustained as well.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting the claims as listed in the Rejection section above.

DECISION

The Examiner's rejection of claims 1-20 is sustained.

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Application 12/561,365

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED